

TONY KNOWLES, GOVERNOR

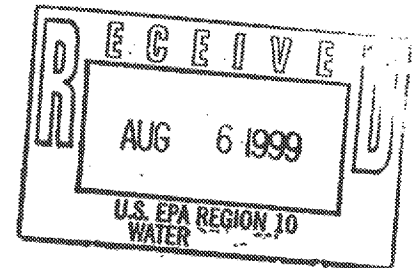
DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

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August 2, 1999

Chuck Clarke, Regional Administrator
USEPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. Clarke:



Recent legislative budget actions designed to downsize state government have affected the ability of the Department of Environmental Conservation (DEC) to fully maintain the level of services previously provided to the citizens, businesses and industries of Alaska. Early in the legislative session, the department held a series of internal discussions to review service plans in anticipation of a reduced budget. During those discussions, we identified two main goals by which to develop any reduced service plans: (1) maintain the highest priority services that achieve DEC's core missions, and (2) avoid further across-the-board cuts that cripple all activities. Programs were examined and compared according to what services were most protective of public health and the environment, and whether those services could be done by some other agency or entity if the department were to no longer provide the service. Understandably, this review focused most upon programs that were significantly funded by state general funds. General funds provided a significant funding source in the Environmental Health Division's food safety inspection work, in the air quality programs and in some of the water quality programs within the Air and Water Quality Division.

The DEC budget authorized by the Alaska Legislature for fiscal year 2000 was seriously reduced in three areas. In some cases, the Legislature cut DEC funds in specific programs – food safety inspections and underground oil storage tanks; but it also made an unallocated cut of \$339,100 in state general funds to the overall budget. In order to absorb the unallocated cuts we, in keeping with the new policy of no additional across-the-board cuts, identified a specific program to be cut. This allows the core mission of the department to still be accomplished in other programs.

The 401 water quality certification program was identified as an essential service, but one that the primary permit would still be issued by the associated federal agency even if DEC were to waive its right to certify the permit. The unallocated budget cut of \$339,100 was therefore assigned to the water permitting program, resulting in an elimination of most staff resources to do 401 certifications for NPDES permits, Corps 404 permits, Federal Energy Regulatory Commission (FERC) licenses, and other federal actions requiring 401 certification under the Clean Water Act (CWA).

Staff reductions in the water permitting group as of July 1 necessitate that the State waive its right to certify associated federal permits. Therefore, this letter gives notice that DEC hereby waives its right under section 401 of the CWA to certify:

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- Section 404 dredge and fill permits issued by the Army Corps of Engineers under CWA sec. 404;
- NPDES permits issued by EPA under CWA sec. 402; and
- FERC licenses issued for hydroelectric projects.

This will include permits for activities such as municipal sewage treatment plants, seafood processing, oil and gas exploration and production, mining operations, construction activities, in-water activities, and hydro-electric activities. This waiver of certification applies to all activities listed above, unless otherwise expressed in writing by DEC. The action is immediately effective until further written notice that the department is in a position to resume part or all of the function of certifying such permits.


Although substantial permit staff reductions have occurred, a small team of highly experienced staff remain. As we begin the new fiscal year, our immediate plan is to dedicate the team to accomplishing the following objectives:

- Issue permits required only by state law for wastewater discharges where there are no associated federal discharge permit. Examples include sewage treatment in small communities and villages, industry camps, and private lodges.
- Sustain resources to maintain state water quality standards that the federal agencies must use when it issues permits in Alaska.
- Work with industry, federal agencies and other stakeholders in the next several months to assess what limited technical services DEC staff should perform to support section 402 and 404 federal permits and to discuss potential options for a renewed state effort in water discharge permitting.

While we regret any inconvenience or disruption this action may cause your agency, this is the best choice we can make under the funding reduction to preserve protection of public health and the environment. As a follow-up item, we respectfully request that you discontinue any reference to a state certification in public noticing of permit applications. We expect that additional discussions or clarification of in-progress permit reviews and other transition issues would be helpful. One such topic is a discussion on what, if any, additional actions we need to take to assure that the federal permit fulfills the Alaska requirement under AS 46.03.100 for a discharge permit.

We look forward to your agency participation in the upcoming industry/agency work group and appreciate your continued assistance as we work through the details of these service reductions.

Sincerely,



Michele Brown
Commissioner

cc: Randy Smith, Director EPA Region 10
Tom Chapple, DEC, Anchorage
Pat Galvin, DGC, Governor's Office

Please note that the same letter was also addressed to the following:

Col Sheldon L. Jahn
US Army COE
Regulatory Branch
PO Box 898
Anchorage, AK 99506-0898

David Boergers, Secretary
Federal Energy Regulatory Commission
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Washington, DC 20426